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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,

vs.

James W. Clark,
Defendant.

No. CR 22-00889-PHX-MTL

PLEA AGREEMENT

Plaintiff, the United States of America, by and through the undersigned attorneys for the Counterterrorism Section, National Security Division, United States Department of Justice, and for the United States Attorney's Office for the District of Arizona, and the defendant, James W. Clark, hereby agree to resolve this matter on the following terms and conditions:

1 **1. PLEA**

2 The defendant will plead guilty to Count Three of the Indictment charging the
3 defendant with a violation of: 18 U.S.C. § 875(c) (Interstate Threat), which is a Class D
4 felony offense.

5 **2. MAXIMUM PENALTIES**

6 a. A violation of 18 U.S.C. § 875(c), Count Three, is punishable by a maximum
7 fine of \$250,000, a maximum term of imprisonment of five (5) years, or both, and a term
8 of supervised release of three (3) years. A maximum term of probation for the offense is
9 five years (including a minimum term of one year if probation is imposed).

10 b. According to the Sentencing Guidelines issued pursuant to the Sentencing
11 Reform Act of 1984, the Court shall order the defendant to:

12 (1) make restitution to any victim of the offense pursuant to 18 U.S.C.
13 § 3663 and/or 3663A, unless the Court determines that restitution would not be
14 appropriate;

15 (2) pay a fine pursuant to 18 U.S.C. § 3572, unless the Court finds that a
16 fine is not appropriate;

17 (3) serve a term of supervised release when required by statute or when a
18 sentence of imprisonment of more than one year is imposed (with the understanding that
19 the Court may impose a term of supervised release in all other cases); and

20 (4) pay upon conviction a \$100 special assessment for each count to
21 which the defendant pleads guilty pursuant to 18 U.S.C. § 3013.

22 c. The Court is required to consider the Sentencing Guidelines in determining
23 the defendant's sentence. However, the Sentencing Guidelines are advisory, and the Court
24 is free to exercise its discretion to impose any reasonable sentence up to the maximum set
25 by statute for the crime(s) of conviction, unless there are stipulations to the contrary that
26 the Court accepts.

1 **3. AGREEMENTS REGARDING SENTENCING**

2 a. The defendant understands that the sentence in this case will be determined
3 by the Court, pursuant to the factors set forth in 18 U.S.C. § 3553(a), including a
4 consideration of the Sentencing Guidelines as set forth in the Guidelines Manual for 2021.

5 b. No Agreements. There are no agreements regarding the final sentence in the
6 case. The parties are free to make any sentence recommendations to the Court they believe
7 are appropriate.

8 c. Restitution. Pursuant to 18 U.S.C. § 3663 and/or 3663A, the defendant
9 specifically agrees to pay full restitution, regardless of the resulting loss amount but in no
10 event more than \$20,000, to all victims directly or proximately harmed by the defendant's
11 "relevant conduct," including conduct pertaining to any dismissed counts or uncharged
12 conduct, as defined by U.S.S.G. § 1B1.3, regardless of whether such conduct constitutes
13 an "offense" under 18 U.S.C. §§ 2259, 3663 or 3663A. The defendant understands that
14 such restitution will be included in the Court's Order of Judgment and that an unanticipated
15 restitution amount will not serve as grounds to withdraw the defendant's guilty plea or to
16 withdraw from this plea agreement.

17 d. Assets and Financial Responsibility. The defendant shall make a full
18 accounting of all assets in which the defendant has any legal or equitable interest. The
19 defendant shall not (and shall not aid or abet any other party to) sell, hide, waste, spend, or
20 transfer any such assets or property before sentencing, without the prior approval of the
21 United States (provided, however, that no prior approval will be required for routine, day-
22 to-day expenditures). The defendant also expressly authorizes the Counterterrorism
23 Section or the United States Attorney's Office to immediately obtain a credit report as to
24 the defendant in order to evaluate the defendant's ability to satisfy any financial obligation
25 imposed by the Court. The defendant also shall make full disclosure of all current and
26 projected assets to the U.S. Probation Office immediately and prior to the termination of
27 the defendant's supervised release or probation, such disclosures to be shared with the
28 Counterterrorism Section and the U.S. Attorney's Office, including the Financial Litigation

Unit, for any purpose. Finally, the defendant shall participate in the Inmate Financial Responsibility Program to fulfill all financial obligations due and owing under this agreement and the law.

e. Acceptance of Responsibility. If the defendant makes full and complete disclosure to the U.S. Probation Office of the circumstances surrounding the defendant's commission of the offense, and if the defendant demonstrates an acceptance of responsibility for this offense up to and including the time of sentencing, the United States will recommend a two-level reduction in the applicable Sentencing Guidelines offense level pursuant to U.S.S.G. § 3E1.1(a). If the defendant has an offense level of 16 or more, the United States will move the Court for an additional one-level reduction in the applicable Sentencing Guidelines offense level pursuant to U.S.S.G. § 3E1.1(b).

4. AGREEMENT TO DISMISS OR NOT TO PROSECUTE

a. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States, at the time of sentencing, shall dismiss the following charges: Counts One and Two of the Indictment.

b. If the Court accepts the defendant's pleas of guilty and the defendant fulfills each of the terms and conditions of this Plea Agreement, the United States agrees that it will not further prosecute the defendant for any crimes described in the below factual basis or for any conduct of the defendant now known to the Counterterrorism Section, to the United States Attorney's Office for the District of Arizona, and to the law enforcement agents working with the Counterterrorism Section and the United States Attorney's Office for the District of Arizona on the present investigation. This agreement does not provide any limitation of liability arising out of any acts of violence.

c. This agreement does not, in any manner, restrict the actions of the United States in any other district or bind any other United States Attorney's Office.

5. COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION

a. If the Court, after reviewing this plea agreement, concludes that any provision contained herein is inappropriate, it may reject the plea agreement and give the

1 defendant the opportunity to withdraw the guilty plea in accordance with Fed. R. Crim. P.
2 11(c)(5).

3 b. If the defendant's guilty plea or plea agreement is rejected, withdrawn,
4 vacated, or reversed at any time, this agreement shall be null and void, the United States
5 shall be free to prosecute the defendant for all crimes of which it then has knowledge and
6 any charges that have been dismissed because of this plea agreement shall automatically
7 be reinstated. In such event, the defendant waives any and all objections, motions, and
8 defenses based upon the Statute of Limitations, the Speedy Trial Act, or constitutional
9 restrictions in bringing later charges or proceedings. The defendant understands that any
10 statements made at the time of the defendant's change of plea or sentencing may be used
11 against the defendant in any subsequent hearing, trial, or proceeding subject to the
12 limitations of Fed. R. Evid. 410.

13 **6. VENUE**

14 The defendant waives any challenge to venue in this district.

15 **7. WAIVER OF DEFENSES AND APPEAL RIGHTS**

16 The defendant waives (1) any and all motions, defenses, probable cause
17 determinations, and objections that the defendant could assert to the indictment or
18 information; and (2) any right to file an appeal, any collateral attack, and any other writ or
19 motion that challenges the conviction, an order of restitution or forfeiture, the entry of
20 judgment against the defendant, or any aspect of the defendant's sentence, including the
21 manner in which the sentence is determined, including but not limited to any appeals under
22 18 U.S.C. § 3742 (sentencing appeals) and motions under 28 U.S.C. §§ 2241 and 2255
23 (habeas petitions), and any right to file a motion for modification of sentence, including
24 under 18 U.S.C. § 3582(c) (except for the right to file a compassionate release motion under
25 18 U.S.C. § 3582(c)(1)(A) and to appeal the denial of such a motion). This waiver shall
26 result in the dismissal of any appeal, collateral attack, or other motion the defendant might
27 file challenging the conviction, order of restitution or forfeiture, or sentence in this case.
28 This waiver shall not be construed to bar an otherwise-preserved claim of ineffective

1 assistance of counsel or of “prosecutorial misconduct” (as that term is defined by Section
2 II.B of Ariz. Ethics Op. 15-01 (2015)).

3 **8. DISCLOSURE OF INFORMATION**

4 a. The United States retains the unrestricted right to provide information and
5 make any and all statements it deems appropriate to the U.S. Probation Office and to the
6 Court in connection with the case.

7 b. Any information, statements, documents, and evidence that the defendant
8 provides to the United States pursuant to this agreement may be used against the defendant
9 at any time.

10 c. The defendant shall cooperate fully with the U.S. Probation Office. Such
11 cooperation shall include providing complete and truthful responses to questions posed by
12 the U.S. Probation Office including, but not limited to, questions relating to:

13 (1) criminal convictions, history of drug abuse, and mental illness; and

14 (2) financial information, including present financial assets or liabilities
15 that relate to the ability of the defendant to pay a fine or restitution.

16 **9. FORFEITURE, CIVIL, AND ADMINISTRATIVE PROCEEDINGS**

17 a. Nothing in this agreement shall be construed to protect the defendant from
18 administrative or civil forfeiture proceedings or prohibit the United States from proceeding
19 with and/or initiating an action for civil forfeiture. Pursuant to 18 U.S.C. § 3613, all
20 monetary penalties, including restitution imposed by the Court, shall be due immediately
21 upon judgment, shall be subject to immediate enforcement by the United States, and shall
22 be submitted to the Treasury Offset Program so that any federal payment or transfer of
23 returned property the defendant receives may be offset and applied to federal debts (which
24 offset will not affect the periodic payment schedule). If the Court imposes a schedule of
25 payments, the schedule of payments shall be merely a schedule of minimum payments and
26 shall not be a limitation on the methods available to the United States to enforce the
27 judgment.

1 **10. ELEMENTS**

2 **Interstate Threat (18 U.S.C. § 875(c)) - Count Three**

3 On or about February 14, 2021, in the District of Arizona and elsewhere:

- 4 1. the defendant knowingly transmitted a communication containing a “true
5 threat”¹ to injure or kill another person;
6 2. the defendant transmitted the communication for the purpose of issuing a true
7 threat; and
8 3. the communication was transmitted in interstate or foreign commerce.

9 **11. FACTUAL BASIS**

10 a. The defendant admits that the following facts are true and that if this matter
11 were to proceed to trial the United States could prove the following facts beyond a
12 reasonable doubt:

13 On or about February 14, 2021, at approximately 9:52 pm, local Arizona time, while
14 in Yarmouth, Massachusetts, Defendant submitted an electronic communication to Public
15 Official 1 with the Arizona Secretary of State’s Office in Phoenix, Arizona, via the
16 “Contact Elections” online form of the Arizona Secretary of State’s Office website, that
17 contained the following:

- 18 1. In the subject line of the message, Defendant wrote Public Official 1’s
19 first name.
20 2. In the body of the communication, Defendant wrote: “Your attorney
21 general needs to resign by Tuesday February 16th by 9 am or the explosive device
22 impacted in her personal space will be detonated. Thanks!!!! Don.”
23
24

25
26 ¹ As used herein and throughout this Plea Agreement, the term “true threat” denotes
27 that the defendant meant to communicate a serious expression of an intent to commit an
28 act of unlawful violence to a particular individual or group of individuals, and that a
reasonable person who read the defendant’s message would have interpreted that message
as a true threat.

1 3. In the “Name” section of the contact form, Defendant wrote: “Donny
2 Dee.”

3 4. In the “Email” section of the contact form, Defendant wrote
4 “jay90will@gmail.com.”

5 On or about February 14, 2021, shortly after transmitting the message described
6 herein, Defendant conducted online searches that included the full name of Public
7 Official 1 in conjunction with the words “how to kill” and “address.” On or about February
8 18, 2021, Defendant conducted online searches involving the Boston Marathon bombing.

9 Shortly after 9:00 am AZ time on February 16, 2021, Defendant’s message was read
10 by Arizona Secretary of State’s Office employees, who expressed fear and immediately
11 reported this message to law enforcement.

12 In response to Defendant’s message, law enforcement conducted partial evacuations
13 and bomb sweeps of the building in which the Arizona Secretary of State’s Office is
14 located, including an evacuation of the floor of the Office of the Arizona Governor located
15 in the same building. Law enforcement also conducted bomb sweeps of Public Official
16 1’s personal residence and of Public Official 1’s car. After sweeps of the listed premises,
17 law enforcement did not locate an explosive device and continued its investigation into the
18 threat.

19 Defendant acknowledges that the circumstances of his sending the message
20 described herein were such that it may reasonably be believed that Defendant placed or
21 would detonate an explosive or other lethal device in a place of public use or a state or
22 government facility. Defendant sent the web contact form message described herein for
23 the purpose of issuing a true threat and acknowledges that a reasonable recipient would
24 have interpreted the web contact message that he transmitted as a true threat.

25 b. The defendant shall swear under oath to the accuracy of this statement and,
26 if the defendant should be called upon to testify about this matter in the future, any
27 intentional material inconsistencies in the defendant’s testimony may subject the defendant
28

1 to additional penalties for perjury or false swearing, which may be enforced by the United
2 States under this agreement.

3 **APPROVAL AND ACCEPTANCE OF THE DEFENDANT**

4 I have read the entire plea agreement with the assistance of my attorney. I
5 understand each of its provisions and I voluntarily agree to it.

6 I have discussed the case and my constitutional and other rights with my attorney.
7 I understand that by entering my plea of guilty I shall waive my rights to plead not guilty,
8 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to
9 present evidence in my defense, to remain silent and refuse to be a witness against myself
10 by asserting my privilege against self-incrimination, all with the assistance of counsel, and
11 to be presumed innocent until proven guilty beyond a reasonable doubt.

12 I agree to enter my guilty plea as indicated above on the terms and conditions set
13 forth in this agreement.

14 I have been advised by my attorney of the nature of the charges to which I am
15 entering my guilty plea. I have further been advised by my attorney of the nature and range
16 of the possible sentence and that my ultimate sentence shall be determined by the Court
17 after consideration of the advisory Sentencing Guidelines.

18 My guilty plea is not the result of force, threats, assurances, or promises, other than
19 the promises contained in this agreement. I voluntarily agree to the provisions of this
20 agreement and I agree to be bound according to its provisions.

21 I understand that if I am granted probation or placed on supervised release by the
22 Court, the terms and conditions of such probation/supervised release are subject to
23 modification at any time. I further understand that if I violate any of the conditions of my
24 probation/supervised release, my probation/supervised release may be revoked and upon
25 such revocation, notwithstanding any other provision of this agreement, I may be required
26 to serve a term of imprisonment or my sentence otherwise may be altered.

27 This written plea agreement, and any written addenda filed as attachments to this
28 plea agreement, contain all the terms and conditions of the plea. Any additional

1 agreements, if any such agreements exist, shall be recorded in a separate document and
2 may be filed with the Court under seal; accordingly, additional agreements, if any, may not
3 be in the public record.

4 I further agree that promises, including any predictions as to the Sentencing
5 Guideline range or to any Sentencing Guideline factors that will apply, made by anyone
6 (including my attorney) that are not contained within this written plea agreement, are null
7 and void and have no force and effect.

8 I am satisfied that my defense attorney has represented me in a competent manner.

9 I fully understand the terms and conditions of this plea agreement. I am not now
10 using or under the influence of any drug, medication, liquor, or other intoxicant or
11 depressant that would impair my ability to fully understand the terms and conditions of this
12 plea agreement.

13
14 Date

6/26/2023



JAMES W. CLARK
Defendant

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Date 6/26/2023

JEANETTE ALVARADO
Asst. Federal Public Defender
Attorney for Defendant

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APPROVAL OF THE UNITED STATES

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth herein are appropriate and are in the best interests of justice.

GARY M. RESTAINO
United States Attorney
District of Arizona

By: _____
Sean K. Lokey
Assistant U.S. Attorney

By: _____
Tanya Senanayake
Trial Attorney
Counterterrorism Section
National Security Division
U.S. Department of Justice

ACCEPTANCE BY THE COURT

Date

Honorable MICHAEL T. LIBURDI
United States District Judge